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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1984

ROBERT GALLAHER, RUTH SCHAPER, MARY MURTHA, THE PARISHIONERS OF ST. MARY'S CHURCH, AND ST MARY'S PARENTS CLUB, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Petitioners,

-against-

ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, THE MOST REVEREND JOHN R. QUINN, DOES ONE THROUGH TEN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

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QUESTIONS PRESENTED FOR REVIEW

1. Do the First and Fourteenth Amendments to the United States Constitution permit the courts to treat the members of a hierarchical church differently, and significantly worse, than members of a congregational church?

2. Do the First and Fourteenth Amendments to the United States Constitution permit an approach to the resolution of church-related property disputes other than the neutral principles of law approach of Jones v. Wolf, 99 S.Ct. 3020 (1979)?

LIST OF PARTIES TO THIS PROCEEDING

The caption includes the parties to this proceeding. The plaintiffs and defendants involved are the plaintiffs and defendants in Santa Clara County Superior Court action number 440698.

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IN THE
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ROBERT GALLAHER, RUTH SCHAPER, MARY MURTHA, THE PARISHIONERS OF ST. MARY'S CHURCH, AND ST MARY'S PARENTS CLUB, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

Petitioners herein petition this Court for a Writ of Certiorari to review the determination of the Court of Appeal of the State of California, First Appellate District, Division Two which was rendered on June 14, 1984 and which affirmed the

grant of a motion for summary judgment against the petitioners herein. Criteria for review of this determination by this Court exist as will be set forth hereinafter in this Petition.

OPINION OF THE COURT BELOW

See appendix.

GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Jurisdiction of this Court arises as follows:

a. The Judgment sought to be reviewed herein was entered by the Court of Appeal of The State of California, First Appellate District, Division Two on June 14, 1984.

b. Petitioners timely filed a petition for rehearing of that decision. The petition was denied on July 13, 1984. The

90 day period for filing the instant petition for review will expire on October 11, 1984 (since July and August are 31 day months). (28 USC 2101(c))

c. The statutory provision required conferring jurisdiction on this Court is 28 USC 1257. The review of a determination by a State Court of Appeals by certiorari is set forth in that section.

STATEMENT OF THE CASE

Petitioners herein are a group of people who were parishoners of St. Mary's Church or members of the St. Mary's Parent Club pertaining to St. Mary's School. These people, their ancestors, and their predecessors in interest contributed the funds and materials used to acquire and build St. Mary's Church and School. They purchased property from the Respondent to

add to the School playground. They paid for all expenses concerned with the Church and School including all fire insurance premiums.

The Church was built in 1891. Ever since the parishoners acquired property upon which to build the Church, the title to the property has always stood in the name of the Respondent. Petitioners always understood from Respondent that such an arrangement was necessary due to the nature of a parish group, but that Respondent held only bare legal title to the property in trust for Petitioners, who are the owners in fact of such property.

The Church was partially destroyed by arson in May, 1979. After Respondent decided to close and raze the Church and School, Petitioners brought this action in December of 1979 as a verified Complaint

to Establish Trust, for Account, Conversion and Declaratory Relief. Respondent demurred to the Complaint. Demurrer was sustained as the First and Second Causes of Action, the Court being of the opinion that those causes of action failed to state causes of action in trust. The Demurrer to the Third and Fourth Causes of Action was overruled.

Petitioners thereafter filed their Amended Complaint. Respondent demurred and brought a motion to strike the Complaint. That Demurrer was overruled and the Motion to Strike was denied. Respondent answered on June 3, 1980.

Petitioners moved for a preliminary injunction and on July 9, 1980, a Temporary Restrining Order was issued to prevent Respondent from razing the Church

and School until the hearing on the preliminary injunction.

The Motion for Preliminary Injunction was denied on July 17, 1980.

Respondent thereafter moved for Summary Judgment and the matter was heard on December 3, 1980. The Respondent's Motion for Summary Judgment was granted on December 8, 1980. Notice of Appeal to the California Court of Appeal was filed January 13, 1981.

Thereafter, Respondent razed the Church and School, all over Appellants' vigorous protests. The Opinion of the Court of Appeal was filed June 14, 1984. Petitioners filed a petition for rehearing in the Court of Appeal on June 29, 1984. It was denied on July 13, 1984. Petitioners filed a Petition for Hearing in the Supreme Court of California on

July 24, 1984. The Opinion of the Court of Appeal became final on August 29, 1984.

REASONS WHY THIS PETITION SHOULD BE GRANTED

This case involves an important question of constitutional law as it pertains to the interaction of Church and State. The question to be answered by this case is whether all religions must be treated equally under the law by the Courts use of the same principles for resolution of church-related property disputes in each case, principles involving only neutral principles of law. Or may one religion be preferred over another, the organizational form of which is different from the first by the courts' use of a different, and more favorable, legal principle for resolution of the church-related property disputes.

This matter is of wide interest, expecially to members of hierarchical churches, and meets the criteria for review by this Court as set forth in Rule 17 of the Rules of This Court.

POINT ONE

THE CALIFORNIA COURT OF APPEAL TREATS THE MEMBERS OF A HIERARCHICAL CHURCH DIFFERENTLY, AND WORSE, THAN MEMBERS OF A CONGREGATIONAL CHURCH IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The United States Supreme Court's most recent discussion of the law concerning the resolution of church property disputes is contained in Jones v. Wolf, 99 S.Ct. 3020 (1979). In Jones v. Wolf, a five to four majority of the Court approved the "neutral principles of law"1/ approach to resolution of property disputes arising within a religious context.

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1. [T]here are "neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded" Presbyterian Church vs. Hull Church, 393 U.S., at 449, 89 S.Ct., at 606, as cited in Jones vs. Wolf, 99 S.Ct. at 3023.

That decision arose in the context of a state court decision which had applied the "neutral principles of law" approach to the resolution of a dispute involving church-related property. The court left the door open to the use of other principles of law in the resolution of other disputes regarding church related property, noting:

> "A state may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters...Md. & Va. Churches 396 U.S. at 368, 90 S.Ct. at 500." 99 S.Ct. at 3025

The California Court of Appeal has already sanctioned the use of the neutral principles of law approach in Presbytery of Riverside v. Community Curch of Palm Springs, 89 Cal.App.3d 737, 152 Cal.Rptr. 854 (1979). In the instant case, the California Court of Appeal uses yet

another approach to the resolution of a church-related property dispute. The Court of Appeal, following the minority reasoning of Jones v. Wolf, and relying on the 1872 case of Watson v. Jones, 80 U.S. 679 (1872) has held that in this case it will enforce the property decisions made within a church of hierarchical polity by the highest authority that has ruled on the dispute in issue.2/ The Court of Appeal takes this position despite the existence of a cause of action based upon constructive trust and containing allegations of fraud on the part of Respondent.

Thus the Court of Appeal has decided that there should be one rule for the resolution of disputes occurring within a hierarchical church, while another rule of

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2. Opinion of the Court of Appeal, Appendix page 28a, Fn.6

law, neutral principles of law, may govern the resolution of disputes occurring in a congregational church.

The Petitioner contends that use of any principle other than that of "neutral principles of law" in the resolution of the instant dispute, or any church-concerned property dispute is unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

Presbytery of Riverside v. Community Church of Palm Springs, 89 Cal.App.3d 737, 152 Cal.Rptr. 854 (1979) adopted the neutral principles of law approach to the resolution of church-related property disputes in California. The Court of Appeal has distinguished the instant case from Presbytery of Riverside v. Community Church of Palm Springs, supra, solely on

the basis that Presbytery concerned a congregational church and this case concerns a hierarchical church. Petitioners assert that reliance on neutral principles of law should be sanctioned by this Court for the resolution of all church related property disputes, rather than an approach of automatic approval of church-related property decisions made by the highest decision making body of a hierarchical church.

The neutral principles theory offers members of a hierarchical church the right to equal protection of the laws, a right guaranteed to all citizens of the United States under the Fourteenth Amendment of the United States Constitution.3/

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3. The Fourteenth Amendment to the United States Constitution is reproduced at Appendix 30a.

If the form of the church determines the legal doctrine to be applied to resolution of church property disputes, and one legal doctrine accepts as a virtually irrebuttable presumption the position that one of the disputants, the leader of the hierarchical church, is correct, while the other legal doctrine places both disputants on an equal footing before the law, then it is clear that the members of a congregational church, who are on an equal footing with their church leader opponents, have more protection under the law than members of a hierarchical church. The members of a congregational church are at least given access to the ear of the Court, while members of a hierarchical church are turned away before even presenting their

case, simply by reason of the identity of their opponent.

In this case the petitioners have alleged that a constructive trust has arisen in their favor by reason of the representations made to them by the respondent, which representations the respondent now disclaims and seeks to explain away. This is an allegation of fraud on the part of respondent. Yet peititoners have not been allowed a trial on the merits, simply because of the identity of their opponent as the leader of a hierarchical church.

The Fourteenth Amendment of the Constitution of the United States guarantees equal protection of the laws. If there is one law for the resolution of congregational church-related property disputes, and one law for the resolution

of hierarchical church-related property disputes, and those laws give one group more rights than the other, equal protection of the law is not afforded to the group whose rights are less broad. In this case, the Court of Appeal has decided that Presbytery of Riverside v. Community Church of Palm Springs, 89 Cal. App.3d 737, 152 Cal. Rptr. 854 (1979) does not apply to this case precisely because Presbytery, supra, concerned a congregational church and this dispute occurs in the context of a hierarchical church.4/

Petitioners cannot understand how the Court has reached this rule of law from the language of Watson v. Jones, 80 U.S. 679 (1872) and in any event, Watson v.

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4. Opinion of the Court of Appeal, Appendix Page 28a of Fn. 6.

Jones, supra and the instant case are completely distinguishable, for in the former the Court had to concern itself with two different churches, divided by doctrinal issues.

The parties to this dispute are not divided by doctrinal or religious issues. Petitioners continue to be members in good standing of the Catholic Church, fulfill their religious duties as members of that church, and are guided by the church's teaching on religious and moral grounds. They continue to recognize respondent's position as their spiritual leader, and the local head of the church to which they belong. But with the court of Watson v. Jones, they believe that:

> "Much as such dissensions among the members of a religious society should be regretted, the

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> courts when so called on [to resolve that dissension] must perform their functions as in other cases.
>
> "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the laws, and the actions of their members subject to its restraints." 80 U.S. 670.

Petitioners here ask that their church leader be subject to the same restraint of law imposed on others in similar positions of trust and authority. Honoring that request will not mean that the court will decide a doctrinal issue, for no doctrinal issues divide the parties here. But Petitioners do assert that there should not be one law for members of a congregational church, and one law for members of a hierarchical church. A church's characterization as hierarchical

or congregational should have no bearing on the manner in which it is treated before the law; the same law should apply to both churches.

POINT TWO

THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION DO NOT PERMIT AN APPROACH TO THE RESOLUTION OF CHURCH-RELATED PROPERTY DISPUTES OTHER THAN THE NEUTRAL PRINCIPLES OF LAW APPROACH OF JONES V. WOLF 99 S.CT. 3020 (1979).

The first Amendment to the United States Constitution proscribes the State's establishment of religion.5/ But if the state gives more deference to the decisions over church-related property of the leaders of one religion than it gives to decisions on the same subject by the leaders of another religion, this act is a

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5. The First Amendment to the United States Constitution is set out in the Appendix at page 30a.

preferential treatment of the religion the property decisions of which religious leaders are given the most deference.

The Court's deference to the purely secular property-related decisions of the leaders of one religion, while such deference is not accorded to the purely secular property-related decisions of the leaders of another religion, gives the first religion an impermissable advantage before the courts compared to the position of the second religion.

Petitioners submit that the Court of Appeal has made this preference, and, in violation of the establishment clause of the First Amendment to the United States Constitution, is thereby prefering one religion, the Catholic, organized on hierarchical lines, to any other which is organized on congregational lines, e.g.,

the United Presbyterian Church of Presbytery vs. Riverside.

The First Amendment also provides the right to petition the government for redress of grievances. This is a hollow right to members of a hierarchical church if the courts will not even hear their case. Even when the dispute in issue does not concern doctrinal matters, the Petitioners are denied their day in court. Their grievance may not be heard by the Court merely due to the identity of the party against whom their grievance is directed. They have a right to file the suit, but not to have their day in court, not to "petition the government for a redress of grievances." The Govenmental body here involved refuses to hear them, no matter what allegations of wrong-doing on the part of respondent are made.

CONCLUSION

A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO SHOULD BE GRANTED.

Petitioners ask that the Court grant their petition for certiorari so that the Court may consider and resolve the important questions of whether the United States Constitution permits a state to adopt different principles for resolution of church-related property disputes depending on the organizational form of the church involved, and whether any principle other than the "neutral principles of law" approach is constitutionally sound for use in the resolution of a church-related property

dispute which concerns no doctrinal issues.

Dated: October 11, 1984

Respectfully sumitted,

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APPENDIX "1"
OPINION OF THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

ROBERT GALLAHER et al.,
Appellants,

v.

ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO et al.,
Respondents.

A010473

(1 Civ. 52478)

(Superior Court of Santa Clara County, No. 440698)

Appellants Robert Gallaher et al., appeal from a judgment entered upon an order granting summary judgment in favor of respondents, the Roman Catholic Archbishop of San Francisco et al.

BACKGROUND

The Roman Catholic Archbishop of San Francisco, a corporation sole (hereafter Archbishop), established the St. Mary's parish in 1891 as a national parish to service the German-speaking people of the

San Jose area. In 1979, when the parish church was partially destroyed by arson and approximately $700,000 in fire insurance proceeds were collected by the Archbishop, a dispute arose over the disposition of these funds and the future of the parish. The Archbishop, despite his power under Canon Law to close a parish at any time, established a special committee comprising representatives of the parish, the archdiocese, local pastors and school personnel, and the Jesuit order which operated St. Mary's. Excepting its parish representatives, the committee voted to close the parish because a German national parish was no longer necessary due to the assimilation of these parishioners into the community and because there was a growing scarcity of priests and parish support staff and other

numerous economic or administrative concerns. The Archbishop followed the committee's recommendation. The parish was closed on June 30, 1980.

Meanwhile, in December, 1979, the parishioners and members of the St. Mary's Parent's Club filed a class action in Santa Clara County Superior Court, asserting that the Archbishop held the parish properties in trust for the parishioners and that the Archbishop had converted the fire insurance proceeds. The parishioners sought a preliminary injunction, declaratory relief, and an accounting.

The Archbishop answered, denying each allegation and asserting the defenses of the Statute of Frauds and failure to state a cause of action. It was also contended

that the relief which the parishioners sought was barred by the First Amendment.

In hearing on the motion for a preliminary injunction against the razing of the parish church, the Archbishop admitted into evidence two title reports. Exhibit C contained title documents of the church, the rectory and church parking lot, which showed that all three properties were held by the Archbishop in fee simple absolute without any restrictions or covenants. It was also disclosed that the parking lot had been deeded from the Sisters of Notre Dame to the Archbishop, and the parishioners thereby conceded that this lot was not involved in the present dispute. Exhibit D constituted two title documents corresponding to the parish school and playground which were both owned in fee

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simple absolute without restrictions or covenants by the Roman Catholic Welfare Corporation, a religious corporation, which is not a party to this action. The Archbishop had deeded these properties to the Welfare Corporation in 1954.1/

An affidavit by Reverend Kirby C. Hanson, Assistant Chancellor of the Archdiocese, and the testimony of Father Raymond Decker disclosed a search of the archdiocese's records finding no trust documents between the Archbishop or Welfare Corporation and the parish. Decker also testified that the Roman Catholic Church is a hierarchical church

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1. The properties in dispute were subsequently deeded to either the Roman Catholic Archbishop of San Jose, a corporate sole, or the Roman Catholic Welfare Corporation of San Jose, a religious corporation, upon their formation in 1981.

in which authority and administration is pyramidical in form, vested in the archbishops under the "uno-jurisdiction" of the pope. In the nineteenth century during a period of "Trusteeism" when parishioners felt that they should have trust and possession of parishes, the church sought to avoid formation of parishes in a trust manner and instead utilized the corporation sole theory so as "to retain the basic theological premise of the hierarchical form of the church which ... separates it from a congregational form of church." The Archbishop of San Francisco was established as a corporation sole in 1854. Decker also testified that certain letters between the Chancellor's office and St. Mary's pastor discussing the school playground between 1928 and 1935 were

references to an exchange of funds, "an accounting process within the archdiocese. It's a shifting from one account to another, nothing more." These letters were not admitted into evidence and are not included within the record on appeal. It was also disclosed at the hearing that the Archbishop was the named insured for the fire insurance policy covering St. Mary's parish. That policy was part of its asset protection program covering 152 parishes and 22 institutions in the archdiocese.

The preliminary injunction was subsequently denied, and the court found that the parishioners "failed to and cannot show any property rights" in the parish property, noting that the conflict was a purely internal matter within the church. The Archbishop then moved for

summary judgment based upon the notice, pleadings, records and files of the previous proceedings. In opposition, the parishioners merely filed an affidavit by fellow parishioner William Dreischmeyer. Summary judgment was summarily granted in favor of the Archbishop. The church was subsequently demolished.

APPEAL

Parishioners and appellants first contend that respondent Archbishop failed to make the factual showing necessary to support a successful motion for summary judgment because the only affidavit submitted in support of the motion was incompetent and did not provide a meritorious defense to appellants' complaint. Appellants also contend that the counter-affidavit of parishioner William Dreischmeyer presented triable

issues of fact that were barred from court review by the First Amendment under the rule annunciated in Presbytery of Riverside v. Community Church of Palm Springs (1979) 89 Cal.App.3d 910 (cert.den., 444 U.S. 974).

Appellants initially attack the affidavit of Reverend Kirby Hanson as being incompetent because it was not based upon personal knowledge. They also contend that this affidavit improperly failed to provide a defense to their complaint. We decline from addressing these issues here because assuming arguendo that Reverend Hanson's affidavit is incompetent, there are nevertheless ample facts to support respondent's motion.

Code of Civil Procedure section 437c provides that a motion for summary

judgment may be supported by "affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice shall or may be taken." Judical notice may be taken of records of any court in this state. (Evid. Code, section 452, subd. (d).) Thus, on a motion for summary judgment, the court is entitled to consider all facts, as distinguished from allegations, in the record including any admissions found in the pleadings of the opposing party. (Joslin v. Marin Mun. Water Dist. (1967) 67 Cal.2d 132, 147-148; Thierfeldt v. Marin Hosp. Dist. (1973) 35 Cal.App.3d 186, 193.) Judicial notice may also be taken of matters set forth in related actions. (Ibid.; see also Ahmanson Bank &

Trust Co. v. Tepper (1969) 269 Cal.App.2d 333, 342.)2/

There are ample facts within the papers supporting the motion for summary judgment to sustain a judgment in favor of respondent. Title to the disputed real properties is held solely by respondent without restriction, covenants or conditions. Regarding the insurance proceeds, appellants have admitted in

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2. We note, however, that we may not take judicial notice of every fact asserted in all documents of a court file. "[A] court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file. A court may take judicial notice of the existence of each document in a court file, but can only take judical notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments." (Day v. Sharp (1975) 50 Cal.App. 3d 904, 914, quoting Jefferson, California Evidence Benchbook (1972) Judicial Notice, section 47.3, at p. 840; emphasis in original.)

their complaint that respondent is the "named insured" under the fire insurance policy.

It is axiomatic that a motion for summary judgment shall be granted if the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., section 437c.) Thus, the trial court was justified in granting summary judgment only if the papers filed in support of the motion, strictly construed, would be sufficient to sustain a judgment in favor of the moving party and those papers of the opposing party, liberally construed, show that there is no issue of material fact for trial. (Ibid.; Cornelison v. Kornbluth (1975) 15 Cal.3d 590, 596; Stationers Corp. v. Dun &

Bradstreet, Inc. (1965) 62 Cal.2d 412, 417.) As we have concluded that respondent has raised sufficient facts to sustain a judgment in its favor, it was incumbent upon appellants to present facts giving rise to a triable issue of material fact within the papers submitted in opposition to the summary judgment motion. (Code Civ. Proc., section 437c, subd. (c).) These facts must be directed to the issues raised by the pleadings (Craig v. Earl (1961) 194 Cal.App.2d 652, 655), and a triable issue of fact cannot be raised by the allegations within appellants' complaint. (Cornelison v. Kornbluth, supra, 15 Cal.3d at p. 597; Coyne v. Krempels (1950) 36 Cal.2d 257, 262.)

We find that appellants have failed to present evidence supporting a possible cause of action in light of the restraints

placed upon civil courts under the First Amendment and thus respondent is entitled to judgment as a matter of law.

It is true that the state has a legitimate interest in resolving property disputes, and a civil court is a proper forum for that resolution. However, special considerations arise when these disputes implicate controversies over church doctrine and practice. (Presbyterian Church v. Hull Church (1969) 393 U.S. 440, 445.) "'[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.' [Citation.] Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. [Citations.] As a corollary to this

commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. [Citations.] Subject to these limitations, however, ...'a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters ....'" (Jones v. Wolf (1979) 443 U.S. 595, 602, quoting Md. & Va. Churches v. Sharpsburg Ch. (1970) 396 U.S. 367, 368 (Brennan, J., concurring).)

Thus, the courts may adopt the approach of Watson v. Jones (1872) 80 U.S. 679, "and enforce the property decisions made ... within a church of hierarchical polity by the hightest authority that has ruled on the dispute at issue, unless 'express terms' in the 'instrument by which the

property is held' condition the property's use or control in a specified manner" and those terms may be effected without consideration of religious doctrine. (Md. & Va. Churches v. Sharpsburg Ch., supra, 396 U.S. at pp. 368-369.)3/ This rule is supported by the rationale that "[t]he right to organize voluntary religious associations to assist in the expression

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3. A hierarchical church exists when the religious congregation is "but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control. ..." (Watson v. Jones, supra, 80 U.S. at p. 722.) "[C]ongregational polity exists when 'a religious congregation ..., by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.'" (Md. & Va. Churches v. Sharpsburg Ch., supra, 396 U.S. at p. 369, fn. 1 (Brennan, J., concurring); Watson v. Jones, supra, 80 U.S. at pp. 722-723.)

and dissemination of any religious doctrine ... and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself

provides for." (Id., at pp. 728-729; emphasis added.)4/

Appellants concede that respondent is a hierarchical church and that there is no express trust between the parties. There are, in fact, no express terms or conditions within the property documents. Seemingly, then, under Watson, appellants' action must fail.5/

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4. Watson v. Jones, supra, was decided before the first Amendment was held applicable as against state action under the Fourteenth Amendment. The Watson rule has since been determined to be mandated by the First Amendment. (Kedroff v. St. Nicholas Cathedral (1952) 344 U.S. 94, 115-116; Presbyterian Church v. Hull Church, supra, 393 U.S. at pp. 450-451.)

5. There are arguably exceptions to the Watson rule when the religious tribunal's decisions is the result of fraud, collusion or arbitrariness. (Gonzalez v. Archbishop (1929) 280 U.S. 1, 16-17.) The so-called "arbitrariness" exception has been severely limited in Serbian Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696, 713, thereby bringing court review

(Fn. cont'd. next pg.)

Appellants, however, contend that this dispute may be determined by a civil court under the "neutral principles of law" doctrine. That doctrine provides that civil courts may resolve litigation over religious property by relying "exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." (Jones v. Wolf, supra, 443 U.S. at p. 603; Presbytery of Riverside v.

(Fn. 5 cont'd.)
under any of the exceptions in doubt. In any event, appellants have not attached respondent's decision-making process in the present case, although they assert that there causes of action against respondent raise issues of fraud. Assuming that their complaint raises a question of a fraudulent decision by the church tribunal, appellants have failed to raise a material issue of fact pertaining to this question for the same reasons discussed infra, supporting our conclusion that appellants have failed to meet their burden in opposing the summary judgment motion.

Community Church of Palm Springs, supra, 89 Cal. App.3d at p. 920.)

Again, appellants' argument must fail. Unlike the above-mentioned cases, there is no written agreement or document by which civil property rights may be delineated. Appellants have conceded that there is no express trust between the parties and that their actions are solely founded upon a constructive trust theory. In their first two causes of action, appellants assert that respondent induced conveyances of the properties corresponding to the church, the rectory and the church parking lot in 1891 and 1898 by representing that title would be taken in trust and that the church would be maintained in perpetuity. The third cause of action alleges that appellant acted as the parishioner's agent in procuring and holding a fire insurance

policy and is now wrongfully withholding this policy's proceeds. The fourth cause of action seeks declaratory relief as to the above, and, fifth and finally, appellants allege that respondent sold property constituting the school playground to the parishioners between 1928 and 1935, as evidenced by alleged correspondence between respondent and the parish priest. Appellants assert that respondent retained title to this lot for mere convenience.

The only paper filed in opposition to the motion for summary judgment was an affidavit by parishioner William Dreischmeyer which provides the gist of appellants' action. Dreischmeyer assets that he has "contributed" money, time and effort, all his life, to St. Mary's parish for its care and maintenance. He states,

"I contributed money to St. Mary's Parish for many years for the express purpose of paying the Archbishop for the parish's purchase of a corner lot ... which was used as a playground" and that "I have always believed ... based upon the implicit and explicit representations of our parish priets [sic] at St. Mary's, that the premiums for fire insurance which we paid every year to the Archbishop, were to pay for the cost of a fire insurance policy for our church so that in case of fire the church could be rebuilt...." He continued, "I, as a parishioner, ... have always believed that because our moneys and those of our forebearers paid for the construction and all maintenance of St. Mary's Church, including all fire insurance premiums, that St. Mary's Church belonged to her parishioners, although I

have always known that the Archbishop ... had to hold title to the property because of the very nature of a changing parish group."

This affidavit does not show sufficient evidence of the matters alleged in appellant's complaint to raise an issuable question of fact. (See Hayward Union etc. School Dist. v. Madrid (1965) 234 Cal.App.2d 100, 120; 4 Witkin, Cal. Procedure (2d ed. 1971) Proceedings Without Trial, section 188, pp. 2837-2838.) Dreischmeyer's statements do not present facts concerning the alleged fraudulent conveyances of the church, rectory, church parking lot and school properties in 1891 and 1898. The affidavit does not provide any facts regarding the asseted "purchase" of the school playground between 1928 and 1935.

Rather, the affidavit merely presents Dreischmeyer's "belief" that the properties were owned by the parish and his assumption that there had been a "purchase" of the school playground. These "beliefs" do not, in and of themselves, constitute evidence supporting appellants' first, second and fifth causes of action for fraud in the conveyances of the church and school properties.

We further conclude that Dreischmeyer's affidavit fails to present evidence raising a triable issue of material fact on the remaining causes of action over the fire insurance policy and proceeds. On that issue, Dreischmeyer stated that he contributed money "based upon the implicit and explicit representations" of the parish priest that these contributions would be used for the cost of a fire

insurance policy so that in case of fire the church could be rebuilt. Although this statement may raise a factual issue whether respondent made representations that the church would be rebuilt, that issue as it has been framed by appellants cannot be litigated in a civil court without conficting with the overriding principle that, in any religious property dispute, a civil court shall not resolve the controversy by reliance on religious precepts or determine an underlying religious dispute. (Jones v. Wolf, supra, 443 U.S. at pp. 602-603; Serbian Orthodox Diocese v. Milivojevich, supra, 426 U.S. 696, 709.)

We find Parent v. Roman Catholic Bishop of Portland (Me. 1981) 436 A.2d 888, to be particularly instructive on this point. In Parent, parishioners brought suit

against the Roman Catholic Bishop upon the latter's decision to close the parish, and in their action, the parishioners sought constructive trust relief based upon a confidential relationship between the parties arising from the bishop's alleged promises to provide parish services and the parishioners' placement of trust in the bishop. The Supreme Judicial Court of Maine concluded that, in the absence of any written evidence of a collateral legal obligation which conditioned or restricted the bishop's use and control of the disputed properties, the litigation could not be resolved without impermissibly passing upon the doctrines and practices of the religious organization. "Ascertaining the content of any ... agreement or trust -- express or implied -- would have required the court to

determine the understanding of the parties concerning the meaning of any oral assurances the bishop may have made. It would have required the court to draw inferences from the conduct of both parties over the years in giving and receiving contributions to the church. Such inquiries would have embroiled this court in extensive consideration of religious doctrine, polity and admin. stration." (Id., at p. 891; emphasis added.)

Appellants seek to distinguish Parent by asserting that the parishioners in that case not only sought title to the church properties but also desired the continuation of religious services. In contrast, they assert that they merely seek property rights in the parish properties.

We disagree with the contention that the present action involves mere property rights. Here, as in Parent, the action seeks to imply a legal relationship based upon inferences drawn from the parties' conduct in giving and receiving contributions over a one hundred year period. Our inquiry would require an examination of any oral assurances that respondent may have made which, in turn, would require interpretation in both a secular and religious context. Thus, our inquiry would entail an extensive consideration of religious doctrine and polity in violation of the First Amendment.6/

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6. We also find appellants' reliance on Presbytery of Riverside v. Community Church of Palm Springs, supra, 89 Cal.App.3d 910, to be misplaced. That case involved a "congregational" church (Fn. cont'd. next pg.)

DISPOSITION

The judgment is affirmed.

Smith, J.

Kline, P. J.

Rouse, J.

(Fn. 6 cont'd.)
organization in which all property titles were held by the local congregation. The present case involves a hierarchical church, and therefore a factually distinguishable situation.

FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, Section One

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.